

REMARKS

Claims 14 to 33 are now pending.

Reconsideration is respectfully requested based on the following.

Claim 16 was rejected under the second paragraph of 35 U.S.C. §112 as indefinite.

While the rejection may not be agreed with, to facilitate the matters, claim 16 has been rewritten to better clarify the claimed subject matter. Therefore, withdrawal of the rejection is respectfully requested, as is approval and entry of claim 16, as presented.

Claims 14, 19 to 22, and 24 to 26 were rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,856,906. (“Winner”).

To reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art.” (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

While the rejection may not be agreed with, to facilitate the matters, claim 14 has been rewritten to better clarify the claimed subject matter. In particular, claim 14, as presented, is directed to a method for controlling a driver-assistance device, including: evaluating measured quantities, to be recorded by sensors, for triggering a reaction, determining

measuring instants through repeating cycles for acquiring and evaluating the measured quantities, each of the repeating cycle having a cycle time t_z , and determining whether a triggering criterion is reached, and if so, sending a trigger to the driver-assistance device, and if not, then predicting a triggering instant, and determining whether one of the measuring instants situates immediately after the triggering instant, and if so, repeating the evaluating of the measured quantities, and if not, then adjusting the cycle time t_z for subsequent measuring instants so that one of the measuring instants follows as immediately as possible an instant at which there are measured quantities that give rise to a triggering.

As to Winner, at col. 3, lines 34 to 59, the cited portion of Winner, in relevant part, merely states as follows:

These measured data at point in time $t+\Delta t$ are compared to the measured data of the preceding measurement cycle at point in time t to determine whether the object detected is an object detected for the first time or an already detected object which has moved in the meantime. Further variables may also be derived from the time derivative of these changes, the acceleration from measured speed values, for example. Col. 3:49-56.

Accordingly, the cited portion of Winner does not identically disclose (or even suggest) the features of “determining whether one of the measuring instants situates immediately after the triggering instant”, and if not, “adjusting the cycle time t_z of subsequent measuring instants”, as provided for in the context of claim 14. Indeed, any reading of Winner does not identically disclose (or even suggest) these features as provided for in the context of claim 14.

Therefore, claim 14 is allowable, as are its dependent claims 19 and 20.

Claim 22, as presented, include features like those of claim 14, as presented, and it is therefore allowable for essentially the same reasons as claim 14, as are its dependent claims 19 and 20.

Claims 15, 23, and 27 were rejected under 35 U.S.C. §103(a) as unpatentable over Winner in view of U.S. Patent Publication No. 2003/0055563 to Lars et al. (“Lars”).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine

reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claims 15, 23, and 27 respectively depend from claims 14 and 22, and are therefore allowable for the same reasons as their respective base claims 14 and 22, since the secondary Lars reference does not cure (and is not asserted to cure) the critical deficiencies of the primary Winner reference.

Claim 16 was rejected under 35 U.S.C. §103(a) as unpatentable over Winner alone. Claim 16 depends from claim 14, and is therefore allowable for essentially the same reasons as claim 14.

Claims 17, 18, 30, and 31 were rejected under 35 U.S.C. §103(a) as unpatentable over Winner in view of U.S. Pat. Pub. No. 2003/0168271 (“Massen”).

Claims 17, 18, 30, and 31 depend respectively from claims 14 and 22, and are therefore allowable for the same reasons as claims 14 and 22, since the secondary Massen reference does not cure (and is not asserted to cure) the critical deficiencies of the primary Winner reference.

Claims 28, 29, 32, and 33 under 35 U.S.C. §103(a) as unpatentable over Winner in view of Lars, and in further view of Massen.

Claims 28, 29, 32, and 33 ultimately depend from claim 14 and are therefore allowable for the same reasons as claim 14, since the secondary Lars and Massen references

do not cure (and is not asserted to cure) the critical deficiencies of the primary Winner reference.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

Accordingly, claims 14 to 33 are allowable.

CONCLUSION

It is therefore respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections and objections be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

Dated: 8/10/2009

By: 

Gerard A. Messina
Reg. No. 35,952

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646

Handwritten notes:
Kylene-
33.865-
Aron C
DEPT (CA)